

IN THE HIGH COURT OF DELHI

Cont. Cas.(C) No.761/2004

Mrs.Meena Sharma Petitioner
! through: Mr.R.K.Chaudhary, Adv.

VERSUS

\$ Mr.D.K.Jain & Ors. Respondent
^ through: Ms.Simran for Ms.Avnish Ahlawat, Adv.
for Directorate of Education
Mr.Ravi Gupta for respondents 1-4

RESERVED ON: 15.11.2007

% DATE OF DECISION: 28.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. On 15.11.2007 arguments were heard. Counsel for the petitioner desired to file written submissions so did counsel for the respondents. 3 days time was granted. Counsel for the petitioner has not filed any written submissions. Counsel for respondents 1 to 4 has filed their written submissions.
2. Having waited enough for written submissions to be brought on record by the petitioner I consider it appropriate to pronounce decision.
3. Petitioner alleges contempt of order dated 3.3.2000 as

clarified vide order dated 10.2.2003 passed in WP(C) No.404/2000.

4. Respondents 1 to 4 allege compliance with the order concerned.

5. On 27.4.1981 petitioner was suspended by the employer, Arwachin Bharti Bhawan Senior Secondary School, of which respondent No.1 is the Chairman. Respondent No.2 is the Manager. Respondent No.3 is the authorized signatory and respondent No.4 is the Principal. On 19.9.1987 her services were terminated. The appeal filed by petitioner against the termination order succeeded before the Delhi School Tribunal which vide order dated 13.8.1996 ordered reinstatement.

6. The Management filed WP(C) No.3624/1996. On 3.3.2000 the writ petition was disposed of directing fresh inquiry to be held. Order of the Delhi School Tribunal was partly set aside. Pertaining to the wages of the petitioner and her entitlement for subsistence allowance during suspension period following directions were issued :-

“32. The second respondent shall be deemed to be under suspension and the petitioner/management shall pay her 50% of her salary from the date of order of dismissal till the final orders are passed by the Director of Education.”

7. At the remanded stage, vide order dated 13.12.2000 the Directorate of Education inflicted penalty of withholding 3 increments with cumulative effect. The Management challenged the said decision by and under WP(C) No.404/2001. By way of an

interim order passed by the writ court order passed by the Director of Education was stayed.

8. Petitioner filed CM No.9725/2001 in WP(C) No.404/2001 praying that in view of the directions issued vide order dated 3.3.2000 in WP(C) No.3624/1996 she was entitled to receive subsistence allowance in terms of Rule 116 of the Delhi School Education Act.

9. The Management opposed the prayer made in CM No.9725/2001 by stating that the petitioner was gainfully employed during period of suspension. Thus, she was not entitled to any subsistence allowance.

10. Vide order dated 10.2.2003 CM No.9725/2001 was disposed of holding as under :-

“I am not impressed with the arguments of learned counsel for the petitioner in as much as the payment, which is to be made now to the petitioner was not in terms of Rule 116 but it is in terms of the order dated 3rd March, 2000 passed by this Court in CWP No.3624/1996. In its order dated 3.3.2000, the Court had directed the petitioner-management to pay 50% of the salary to respondent No.2 from the date of the order of dismissal till the final orders were passed by the Director of Education. The Director of Education having now passed an order which is challenged by the petitioner in this Court, the petitioner is duty bound to to pay 50% of the salary to respondent No.2 from the date of the order of dismissal till the order was passed by the Director of Education. There is no other way to read the order dated 3.3.2000 passed by this Court.”

11. Appeal filed by the Management against the order dated 10.2.2003 was dismissed but time was extended till 2.4.2003 to comply with the directions issued vide order dated 10.2.2003.

12. WP(C) No.404/2001 was allowed vide order dated 23.2.2004 but with a direction to the Management to continue to pay subsistence allowance to the petitioner as directed vide order dated 3.3.2000 in WP(C) No.3624/1996.

13. The issue pertaining to imposition of penalty was directed to be re-considered by a disciplinary committee constituted as per law. Pertaining to subsistence allowance, directions issued were as under :-

“32. Since while deciding CW No.3624/1996, this court had directed that the deemed suspension of respondent No.2 shall continue till final orders are passed I likewise direct that the deemed suspension of respondent No.2 would continue till the disciplinary proceedings result in a final order being passed. Petitioner would continue to pay to respondent No.2 50% of her salary as subsistence allowance as directed under judgment and order dated 3.3.2000.”

14. According to the petitioner subsistence allowance directed to be paid to her vide order dated 3.3.2000 reiterated vide order dated 23.2.2004 has not been paid.

15. According to the respondents they had tendered subsistence allowance in sum of Rs.46,137/- but same was refused by the petitioner as she alleged that her entitlement was to receive subsistence allowance as per Rule 116 of the Delhi School Education Rules.

16. From the pleadings of the parties in the contempt proceedings it is not clear as to what would be the entitlement of the petitioner if she has to receive only 50% of the salary towards subsistence allowance.

17. Needless to state, orders non-compliance whereof is pleaded required the Management to pay 50% of the salary to be paid as subsistence allowance.

18. In my opinion, computations need not be effected in contempt jurisdiction. The school being a recognized school is amenable to administrative control of the Director of Education. The Director of Education is even otherwise under a legal obligation to ensure that judicial orders are complied with by schools under the administrative control of the Director of Education.

19. I discharge the notice of contempt but simultaneously issue directions to the Director of Education directing him to ensure compliance of orders dated 3.3.2000 passed in WP(C) No. 3624/1996 as also order dated 23.02.2004 passed in WP(C) No.404/2001.

20. It would be open to the Directorate of Education to take appropriate measures against the Management if he finds that 50% of the last drawn salary has not been paid to the petitioner by way of subsistence allowance.

21. Needless to state Directorate of Education would hear the petitioner as also the Management of the school before passing any orders.

22. No costs.

November 28,2007
VG

PRADEEP NANDRAJOG
(JUDGE)